

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 02 2017

OFFICE OF
MANAGING DIRECTOR

David Tillotson, Esquire
4606 Charleston Terrace, NW
Washington, DC 20007

Licensee/Applicant: **Casa En Denver, Inc.**
Waiver of Regulatory Fees: Financial Hardship
Disposition: **Dismissed and Denied** (47 C.F.R. §
1.1166)
Stations: KQCK and KQDK-CD
Fee: Fiscal Year (FY) 2016 Regulatory Fees
Date Request Filed: Sep. 16, 2016
Fee Control No.: RROG 16-00016217
Amount Due: *See Fee Filer*

Dear Counsel:

This responds to Licensee's *Request*¹ for a 120-day deferment of the unpaid Fiscal Year (FY) 2016 regulatory fees due for Stations KQCK and KQDK-CD. As we discuss below, we dismiss and deny the *Request* because Licensee failed to submit a complete petition to defer payment, and it failed to substantiate both prongs of the Commission's standard, extraordinary and compelling circumstances and that the requested 120-day deferral will promote the public interest. Because we dismissed and denied the *Request*, Licensee became delinquent when it did not pay the fees when due, a 25% penalty accrued, and Licensee was red-lighted. We demand immediate payment.

Background

On September 16, 2016, Licensee filed its *Request* asking the Commission to defer for 120 days payment of the fees due for Stations KQCK and KQDK-CD.

Licensee asserts, it "and its parent company Casa Media Partners LLC ... are currently supervised by the United States Bankruptcy Court, Southern District of Florida ... presiding over ... jointly administered cases ... and ... at the present time the Licensees do not have sufficient cash on hand to pay their FY 2016 Regulatory Fees. The Licensees are ... negotiating a restructuring plan ... to dispose of certain assets [and] Licensees anticipate submitting the Plan for approval ... within the next 60 days. Approval of the Plan will provide the Licensees with sufficient funds to pay their FY 2016 Regulatory Fees ... a 120 day deferral ... would serve the

¹ Casa En Denver, Inc., Request for Deferral of FY 2016 Regulatory Fees for Station KQDK-CD, Facility ID 29544, (sic) Denver, Colorado and KQCK, Facility ID 18287, Cheyenne, WY, To: The Secretary Attn: Managing Director, Request For Deferral of FY 2016 Regulatory Fees (Sep. 2, 2016) (*Request*).

public interest.”² Licensee did not include supporting financial documentation or documentation pertaining to the asserted bankruptcy court filings.

Standards

Under 47 C.F.R. § 1.1166, which pertains to petitions for both a waiver and deferral from payment, a petition to defer payment due to financial hardship, must be supported by documentation of the financial hardship.³

Furthermore, under 47 U.S.C. § 159 and 47 C.F.R. §§ 1.1166, the Commission imposes the statutory penalty⁴ on any licensee that submits a request for relief based on financial hardship that *does not include* either the full fee or a timely petition to defer payment *supported by documentation of the financial hardship*.

The Commission recognizes that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause⁵ and a finding that the public interest will be served thereby.⁶ The applicant has the burden of demonstrating a waiver is warranted,⁷ *i.e.*, that special circumstances warrant a deviation from the general rule, here to collect the regulatory fee, and that the deviation will serve the public interest.⁸

Specifically, an applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.⁹ The required

² Request at 1-2.

³ 47 C.F.R. § 1.1166(b); Assessment and Collection of Regulatory Fees For Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) (“A regulatee’s mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.”).

⁴ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferments of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) (“The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. * * * The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.”).

⁵ 47 C.F.R. § 1.3.

⁶ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁷ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

⁸ *Northeast Cellular*, 897 F.2d at 1166.

⁹ 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; *Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) (“Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee’s ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to

“sufficient showing of financial hardship”¹⁰ is more that “[m]ere allegations or documentation of financial loss, standing alone.” “[I]t [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”¹¹ Thus, to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹²

Accordingly, each licensee has the burden of demonstrating compelling and extraordinary circumstances that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission’s regulatory action.¹³ For the reasons discussed below, we find that Licensee fails to meet our standard.

Discussion

The Commission has narrowly interpreted its authority to grant waivers and deferrals to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹⁴ In that context, a “sufficient showing of financial hardship”¹⁵ is more than “[m]ere allegations or documentation of financial loss, standing alone,” rather “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”¹⁶

Licensee requests a 120-day deferral from paying the FY 2016 regulatory fees due September 27, 2016.¹⁷ We review a petition to defer payment under the standards set forth at 47 C.F.R. § 1.1166(c) and in the Commission’s rulemaking and decisions. Under section 1.1166(c), a request for deferral “due to financial hardship [must be] supported by documentation of the financial hardship” or it will be dismissed. Moreover, Licensee must establish for the deferral “good cause” and the result, deferral, “would promote the public interest.”¹⁸ The “regulatee’s

pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

¹⁰ *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*, 1994 *Report and Order*, 9 FCC Rcd at 5344.

¹⁴ Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, ¶¶ 70, 88 (1987); *Accipiter Communications, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 18239, 18241, ¶ 8 (2001) (waiver predicated on financial need must show impact of regulatory fee will affect regulatee’s ability to serve the public).

¹⁵ *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

¹⁶ *Id.*

¹⁷ *Payment Methods and Procedures For Fiscal Year 2016 Regulatory Fees, Public Notice* (rel. Sep. 6, 2016).

¹⁸ 47 C.F.R. § 1.1166.

mere allegation of financial hardship ... does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed.”¹⁹ Licensee asserted only that it “do[es] not have sufficient cash on hand to pay [the] FY 2016 Regulatory Fees,” and in so doing, Licensee raises ambiguity as to its assets other than “cash on hand.” Moreover, Licensee failed to present any supporting documentation, financial or otherwise. As a result, the submission is incomplete, and we will not speculate to fill in the gaps.²⁰ Hence, we dismiss.

Next, and as a separate matter, we note that Licensee failed to establish both required prongs of the standard for determining whether to grant a deferral; “*good cause*” and that deferment would “*promote the public interest*.” Licensee asserts that as of September 2, 2016, it lacks “cash on hand” and that it was “negotiating a restructuring plan” that it intended to submit “within the next 60 days” from September 2, 2016, or by October 30, 2016, that will “will provide the Licensees with sufficient funds to pay their FY 2016 Regulatory Fees.” These unsupported assertions fail to establish good cause or demonstrate that the public interest is served by deferring payment of the fees. On this additional ground, we deny the *Request*.

We dismiss and deny the *Request*, hence the unpaid FY 2016 regulatory fees are delinquent as of the due date. This is a demand for payment of the fees, together with the 25% penalty that accrued,²¹ and interest and applicable additional penalties required by 31 U.S.C. § 3717 that have accrued from the date of delinquency. This informs Licensee failure to pay may result in the Commission withholding action on and dismissal of any application or request filed by the applicant.

This action is effective on its date of issuance,²² and any petition for reconsideration will not stop the Commission from continuing to enforce its rules or its decision, including collecting a regulatory fee.²³ Specifically, 47 C.F.R. § 1.1167(b) provides, “[t]he filing of a petition for

¹⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011)

²⁰ *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) (“petitioner . . . has the ‘burden of clarifying its position’ before the agency.”); see also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

²¹ 47 U.S.C. § 159(c)(1).

²² 47 C.F.R. § 1.102(b)(1) (“Non-hearing . . . actions taken pursuant to delegated authority shall, unless otherwise ordered by the designated authority, be effective upon release of the document containing the full text of such action . . . , or in the event such a document is not released, upon release of a public notice announcing the action in question.”)

²³ 47 U.S.C. § 405(a) (“No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission.”); 47 C.F.R. §§ 1.102(b)(2) (“If a petition for reconsideration of a non-hearing action is filed, the designated authority may in its discretion stay the effect of its action pending disposition of the petition for reconsideration.”) and 1.1167(b) (“The filing of a petition for reconsideration . . . of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission’s action, or delegated action, on a request for waiver, reduction or deferment. . . . Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission’s Secretary and clearly marked to the attention of the Managing Director . . . (2) If the fee payment should fail while the Commission is considering the matter, the petition for

reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment."²⁴ Furthermore, 47 C.F.R. § 1.1910 provides for withholding action on and dismissal of an application, including a petition for reconsideration, submitted from a delinquent debtor. If the debt is unpaid, under the law,²⁵ the Commission will initiate collection proceedings and impose other administrative sanctions.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


Kathleen Heuer
For Chief Financial Officer

reconsideration or application for review will be dismissed."); Applications of East River Electric Power Cooperative, *Memorandum Opinion and Order*, 18 FCC Rcd 15977, 15982, ¶ 13 (2003) ("The existence of a pending Petition for Reconsideration or Application for Review does not prevent the Commission from continuing to apply its rules").

²⁴ See 47 C.F.R. §§ 1.1157(c)(1) ("[a]ny late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164); 1.1164(c) ("[i]f a regulatory fee is not paid in a timely manner, the regulate will be notified ... This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal"); 1.1164(e) ("[a]ny pending or subsequently filed application ... will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee; 1.1164(f)(5) ("[a]n application ... by a regulatee that is delinquent in its debt ... is also subject to dismissal under 47 CFR 1.1910.").

²⁵ See 47 C.F.R. § 1.1901, *et seq.*

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Washington, D. C. 20554

MAR 02 2017

OFFICE OF
MANAGING DIRECTOR

David Tillotson, Esquire
4606 Charleston Terrace, N.W.
Washington, DC 20007

Licensee/Applicant: **Casa Media Partners, LLC**
Waiver of Regulatory Fees: Financial Hardship
Disposition: **Dismissed and Denied** (47 C.F.R. §
1.1166)
Stations: KMQA-FM, KAEH-FM, KLES-FM,
K282AE, KTNS-AM, KAAT-FM, KMNA-FM,
KZXR-AM, KIQQ, KIQQ-FM, KMEN-FM and
KAAT-FM1
Fee: Fiscal Year (FY) 2016 Regulatory Fees
Date Request of Request: Sep. 2, 2016
Date Request Filed: Sep. 16, 2016
Fee Control No.: RROG 16-00016216
Amount Due: *See Fee Filer*

Dear Counsel:

This responds to Licensee's *Request*¹ for a 120-day deferment from paying the Fiscal Year (FY) 2016 regulatory fees due for Stations KMQA-FM, KAEH-FM, KLES-FM, K282AE, KTNS-AM, KAAT-FM, KMNA-FM, KZXR-AM, KIQQ, KIQQ-FM, KMEN-FM, and KAAT-FM1. As we discuss below, we dismiss and deny the *Request* because Licensee failed to submit a complete petition to defer payment, and it failed to substantiate both prongs of the Commission's standard, extraordinary and compelling circumstances and that the requested 120-day deferral will promote the public interest. Accordingly, we dismiss the *Request*. Because we dismiss and deny the *Request*, Licensee is delinquent for not paying the fees when due, a 25% penalty accrues, and Licensee is red lighted. We demand immediate payment.

Background

On September 16, 2016, Licensee filed its *Request* asking the Commission to defer for 120 days payment of the fees due for Stations KMQA-FM, KAEH-FM, KLES-FM, K282AE, KTNS-AM, KAAT-FM, KMNA-FM, KZXR-AM, KIQQ, KIQQ-FM, KMEN-FM, and KAAT-FM1.

¹ Casa Media Partners, LLC, Request for Deferral of FY 2016 Regulatory Fees for Stations Listed In Exhibit A Hereto, To: The Secretary Attn: Managing Director, Request For Deferral of FY 2016 Regulatory Fees (Sep. 2, 2016) (*Request*) with Exhibit A, List of Stations.

Licensee “requests pursuant to Section 1.116 [sic] of the Commission’s rules a 120 day deferral of its obligation to pay FY 2016 annual regulatory fees” on the grounds that Licensee and its wholly owned subsidiary “are currently supervised by the United States Bankruptcy Court, Southern District of Florida ... presiding over ... jointly administered cases ... and ... at the present time the Licensees do not have sufficient cash on hand to pay their FY 2016 Regulatory Fees. The Licensees are currently negotiating a restructuring plan ... to dispose of certain assets [and] Licensees anticipate submitting the Plan for approval ... within the next 60 days. Approval of the Plan will provide the Licensees with sufficient funds to pay their FY 2016 Regulatory Fees ... a 120 day deferral ... would serve the public interest.”² Licensee did not include supporting financial documentation or documentation pertaining to the asserted bankruptcy court filings, *e.g.*, first day filings.

Standards

Under 47 C.F.R. § 1.1166, which pertains to petitions for both a waiver and deferral from payment, a petition to defer payment due to financial hardship, must be supported by documentation of the financial hardship.³

Furthermore, under 47 U.S.C. § 159 and 47 C.F.R. § 1.1166, the Commission imposes the statutory penalty⁴ on any licensee that submits a request for relief based on financial hardship that *does not include* either the full fee or a timely petition to defer payment *supported by documentation of the financial hardship*.

The Commission recognizes that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause⁵ and a finding that the public interest will be served thereby.⁶ The applicant has the burden of demonstrating a waiver is warranted,⁷ *i.e.*, that special circumstances

² Request at 1-2.

³ 47 C.F.R. § 1.1166(b); Assessment and Collection of Regulatory Fees For Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) (“A regulatee’s mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.”).

⁴ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; Waivers, Reductions and Deferrals of Regulatory Fees, *Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) (“The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. * * * The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.”).

⁵ 47 C.F.R. § 1.3.

⁶ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁷ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

warrant a deviation from the general rule, here to collect the regulatory fee, and that the deviation will serve the public interest.⁸

Specifically, an applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁹ The required "sufficient showing of financial hardship"¹⁰ is more than "[m]ere allegations or documentation of financial loss, standing alone." "[I]t [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹¹ Thus, to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹²

Accordingly, each licensee has the burden of demonstrating compelling and extraordinary circumstances that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.¹³ For the reasons discussed below, we find that Licensee fails to meet our standard.

Discussion

The Commission has narrowly interpreted its authority to grant waivers and deferrals to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁴ In that context, a "sufficient showing of financial hardship"¹⁵ is more than "[m]ere allegations or documentation of financial loss, standing alone," rather "it [is] incumbent upon each regulatee to fully document its financial

⁸ *Northeast Cellular*, 897 F.2d at 1166.

⁹ 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; *Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

¹⁰ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*, 1994 *Report and Order*, 9 FCC Rcd at 5344.

¹⁴ Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, ¶¶ 70, 88 (1987); *Accipiter Communications, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 18239, 18241, ¶ 8 (2001) (waiver predicated on financial need must show impact of regulatory fee will affect regulatee's ability to serve the public).

¹⁵ *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”¹⁶

Licensee requests a 120-day deferral from paying the FY 2016 regulatory fees due September 27, 2016.¹⁷ We review a petition to defer payment under the standards set forth at 47 C.F.R. § 1.1166(c) and in the Commission’s rulemaking and decisions. Under section 1.1166(c), a request for deferral “due to financial hardship [must be] supported by documentation of the financial hardship” or it will be dismissed. Moreover, Licensee must establish for the deferral “good cause” and the result, deferral, “would promote the public interest.”¹⁸ The “regulatee’s mere allegation of financial hardship ... does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed.”¹⁹ Licensee asserted only that it “do[es] not have sufficient cash on hand to pay [the] FY 2016 Regulatory Fees,” and in so doing, Licensee raises ambiguity as to its assets other than “cash on hand.” Moreover, Licensee failed to present any supporting documentation, financial or otherwise. As a result, the submission is incomplete, and we will not speculate to fill in the gaps.²⁰ Hence, we dismiss.

Next, and as a separate matter, we note that Licensee failed to establish both required prongs of the standard for determining whether to grant a deferral; “*good cause*” and that deferment would “*promote the public interest*.” Licensee asserts that as of September 2, 2016, it lacks “cash on hand” and that it was “negotiating a restructuring plan” that it intended to submit “within the next 60 days” from September 2, 2016, or by October 30, 2016, that will “will provide the Licensees with sufficient funds to pay their FY 2016 Regulatory Fees.” These unsupported assertions fail to establish good cause or demonstrate that the public interest is served by deferring payment of the fees. On this additional ground, we deny the *Request*.

We dismiss and deny the *Request*, hence the unpaid FY 2016 regulatory fees are delinquent as of the due date. This is a demand for payment of the fees, together with the 25% penalty that accrued,²¹ and interest and applicable additional penalties required by 31 U.S.C. § 3717 that have accrued from the date of delinquency. This informs Licensee failure to pay may result in the Commission withholding action on and dismissal of any application or request filed by the applicant.

¹⁶ *Id.*

¹⁷ Payment Methods and Procedures For Fiscal Year 2016 Regulatory Fees, *Public Notice* (rel. Sep. 6, 2016).

¹⁸ 47 C.F.R. § 1.1166.

¹⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011).

²⁰ *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) (“petitioner . . . has the ‘burden of clarifying its position’ before the agency.”); see also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

²¹ 47 U.S.C. § 159(c)(1).

This action is effective on its date of issuance,²² and any petition for reconsideration will not stop the Commission from continuing to enforce its rules or its decision, including collecting a regulatory fee.²³ Specifically, 47 C.F.R. § 1.1167(b) provides, "[t]he filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment."²⁴ Furthermore, 47 C.F.R. § 1.1910 provides for withholding action on and dismissal of an application, including a petition for reconsideration, submitted from a delinquent debtor. If the debt is unpaid, under the law,²⁵ the Commission will initiate collection proceedings and impose other administrative sanctions.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


For: Kathleen Heuer
Chief Financial Officer

²² 47 C.F.R. § 1.102(b)(1).

²³ 47 U.S.C. § 405(a) ("No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission."); 47 C.F.R. §§ 1.102(b)(2) ("If a petition for reconsideration of a non-hearing action is filed, the designated authority may in its discretion stay the effect of its action pending disposition of the petition for reconsideration.") and 1.1167(b) ("The filing of a petition for reconsideration ... of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. ... Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director ... (2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed."); Applications of East River Electric Power Cooperative, *Memorandum Opinion and Order*, 18 FCC Rcd 15977, 15982, ¶ 13 (2003) ("The existence of a pending Petition for Reconsideration or Application for Review does not prevent the Commission from continuing to apply its rules").

²⁴ See 47 C.F.R. §§ 1.1157(c)(1) ("[a]ny late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164); 1.1164(c) ("[i]f a regulatory fee is not paid in a timely manner, the regulatee will be notified ... This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal"); 1.1164(e) ("[a]ny pending or subsequently filed application ... will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee; 1.1164(f)(5) ("[a]n application ... by a regulatee that is delinquent in its debt ... is also subject to dismissal under 47 CFR 1.1910.").

²⁵ See 47 C.F.R. § 1.1901, *et seq.*

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

NOV 21 2016

OFFICE OF
MANAGING DIRECTOR

Aaron P. Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M Street, NW, Suite 240
Washington, DC 20036

Licensee/Applicant: **Front Range Sports Network, LLC**

Petition to Stay an Order on Delegated Authority
Disposition: **Denied** (47 U.S.C. § 159; 47 C.F.R. §§ 0.401, 1.7, 1.44, and 1.1166)

Station(s): KJAC-FM and KJAC-FM1

Fee: Fiscal Year (FY) 2015 Regulatory Fees

Date Request Submitted: Jun. 17, 2016

Date Regulatory Fee Paid: Delinquent

Fee Control No.: RROG 16-00016175

Amount Due: **Delinquent Debt; see Fee Filer**

Dear Counsel:

This responds to Licensee's June 17, 2016, Request for Stay¹ (*Stay*) of the Managing Director's March 2, 2016, dismissal and denial² (*Mar. 2, 2016, Dismissal and Denial*) of Licensee's *Requests*³ for deferral and waiver of payment of the required Fiscal Year (FY) 2015 regulatory fees due for Stations KJAC-FM, and KJAC-FM1. As we discuss below, we deny the *Stay* because Licensee fails to show that: (1) it will likely prevail on the merits; (2) it will suffer irreparable harm unless a stay is granted; (3) other interested parties will not be harmed if a stay is granted; and (4) a stay will serve the public interest.⁴ Further, we note that the Commission has complied with 31 U.S.C. § 3711(g), 31 C.F.R. §§ 285.12 and 901.1(e), and 47 C.F.R. §

¹ Front Range Sports Network, LLC, KJAC (FM), Facility ID No. 38345, KJAC-FM1, Facility ID No. 160514, Request For Stay (Jun. 17, 2016) (*Stay*).

² Letter from Mark Stephens, Chief Financial Officer, FCC, Washington, DC 20554 to Aaron Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M Street, NW, Suite 240, Washington, DC 20036 (Mar. 2, 2016) (*Mar. 2, 2016, Dismissal and Denial*).

³ Letter from Aaron Shainis, Esq., Shainis & Peltzman, Chtd., Suite 240, 1850 M Street, N.W., Washington, D.C. 20036 to Federal Communications Commission, Office of the Managing Director, 445 12th St., S.W., Rm 1-A625, Washington, D.C. 20554 (Sep. 24, 2015) (*Letter Request*); Letter from Aaron Shainis, Esq., Shainis & Peltzman, Chtd., Suite 240, 1850 M Street, N.W., Washington, D.C. 20036 to Federal Communications Commission, Office of the Managing Director, 445 12th St., S.W., Rm 1-A625, Washington, D.C. 20554 (Sep. 24, 2015) (*Waiver Request*) with IRS Form 8879-PE, IRS e-file Signature Authorization for Form 1965 (dated 03/01/15); IRS Form 1065, U.S. Return of Partnership Income, Front Range Sports Network, LLC (*IRS 1065*); IRS Form 1125-A, Cost of Goods Sold (*IRS 1125-A*); Form 1065, Statements 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 (*1065 Statements*); Front Range Sports Network, Profit & Loss-Monthly, Jan. through Aug. 2015 (*2015 P&L*).

⁴ *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

1.1917(c)⁵ by transferring the delinquent debt⁶ to the U.S. Department of the Treasury, Bureau of the Fiscal Service for collection action. Furthermore, as set forth at 47 C.F.R. § 1.1910, we continue to withhold action on and to dismiss any application⁷ for relief from Licensee.

Background

On September 24, 2015, Licensee submitted the *Letter Request* and *Waiver Request* both addressed, "Federal Communications Commission, Office of the Managing Director, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554." Licensee explained in its *Letter Request*, it "is concurrently filing a request of waiver of regulatory fees. That submission clearly demonstrates the inability ... to pay ... Accordingly, [Licensee] also requests deferment of payment of the fees while the Commission considers the Request for Waiver."⁸ The *Waiver Request* included as attachments, Licensee's IRS 1065, IRS 1125-A, 1065 Statements, and the 2015 P&L.⁹ The tax return information and the 2015 P&L report a partnership income loss for the tax year 2014 and 8 months of calendar year 2015.

In the *Waiver Request*, Licensee asked the Commission to waive Licensee's "obligation to pay regulatory fees due September 24, 2015 ... for the reason of inability to pay."¹⁰ Licensee referred to "Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5345-46 (1994), *recon. granted* 10 FCC Rcd 12759 (1995)" as support for its assertion that "in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. In such cases, the Commission considers a licensee's cash flow, as opposed to the entity's profits, to determine whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public."¹¹ Licensee asserted that its "2014 tax return ... demonstrates a loss [and] a profit and loss statement from January through August 2015, demonstrat[es] a loss"¹²

As we discuss below, we dismissed and denied both the *Letter Request* and the *Waiver Request* in *Mar. 2, 2016, Dismissal and Denial* with a comprehensive explanation of the standards for (a) filing a petition to defer payment and a petition to waive a regulatory fee, and (b) evaluating the separate petitions to defer payment and to waive a fee.¹³

⁵ 47 C.F.R. 1.1917(c) ("All non-tax debts of claims owed to the Commission that have been delinquent for a period of 120 days shall be transferred to the Secretary of the Treasury. Debts which are less than 120 days delinquent may also be referred to the Treasury. Upon such transfer, the Secretary of the Treasury shall take appropriate action to collect or terminate collection actions on the debt or claim.").

⁶ Our *Mar. 2, 2016, Dismissal and Denial*, pp. 1 and 7, demanded payment and notified Licensee it was delinquent and red lighted.

⁷ 47 C.F.R. § 1.1901(d) ("The term *application* includes in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.").

⁸ *Letter Request*.

⁹ *Waiver Request*.

¹⁰ *Id.* at 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Mar. 2, 2016, Dismissal and Denial*, pp. 2-4, 5-6.

We identified Licensee's procedural errors and explained how they caused dismissal. For example, first, Licensee submitted the *Letter Request* and *Waiver Request* directly to the Office of the Managing Director at Room 1-A625, instead of the Office of the Secretary.¹⁴ As a second, separate ground for dismissal, we explained, Licensee's *Letter Request* was not a separate petition¹⁵ to defer payment and it did not include supporting documentation. We explained that a general reference to financial information attached to the separate *Waiver Letter* did not satisfy the requirement to provide supporting documentation with the petition to defer payment.¹⁶ Moreover, the mere assertion that Licensee "[was] concurrently filing a request of waiver of regulatory fees" and that the "submission clearly demonstrate[d] the inability ... to pay"¹⁷ failed to transform the letter into a separate petition to defer, and it failed to establish the necessary elements to obtain a deferral, *i.e.*, both *good cause* and that the *public interest is served*.¹⁸ Similarly, in the *Waiver Request*, Licensee failed to meet the standards for either filing its submissions or establishing both *good cause* and that the *public interest is served*. Thus, under 47 C.F.R. §§ 0.401, 1.7, and 1.1166,¹⁹ we dismissed.²⁰

Next, we identified and explained the grounds for denying both the *Letter Request* and the *Waiver Request*.²¹ For example, we provided Licensee with a comprehensive explanation of the standards for evaluating individual petitions to defer payment and to waive the fee,²² including that Licensee must show *good cause*²³ and that the *public interest will be served thereby*.²⁴ Specifically, an applicant seeking a waiver has the burden of demonstrating relief is

¹⁴ *Id.* at 5; 47 C.F.R. §§ 0.401, 1.7, and 1.1166.

¹⁵ *Mar. 2, 2016, Dismissal and Denial* at 5; 47 C.F.R. §§ 1.44(c) & (d) ("(c) Requests requiring action by any person or persons pursuant to delegated authority shall not be combined in a pleading with requests for action by any other person or persons acting pursuant to delegated authority. (d) Pleadings which combine requests in a manner prohibited by paragraph (a), (b), or (c) of this section may be returned without consideration to the person who filed the pleading."); 1.1166(a) ("Requests for waivers ... or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.").

¹⁶ *Id.*

¹⁷ *Letter Request*.

¹⁸ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166.

¹⁹ 47 C.F.R. § 1.1166(a) ("Requests for waivers ... or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission."); 47 C.F.R. § 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."); *Assessment and Collection of Regulatory Fees for Fiscal Year 2011, Report and Order*, 26 FCC Rcd 10812, 10819, ¶17 (2011) ("Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed.").

²⁰ *Mar. 2, 2016, Dismissal and Denial*, p. 5.

²¹ *Id.* at 6.

²² *Id.*

²³ 47 C.F.R. § 1.3.

²⁴ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *See also* Implementation of Section 9 of the Communications Act, *Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon.*

warranted,²⁵ *i.e.*, that special circumstances warrant a deviation from the general rule to collect the regulatory fee, and that the deviation will serve the public interest.²⁶ We explained, 47 C.F.R. § 1.1166 provides,

The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission.

Additionally, we repeated the standard that an applicant must make a “sufficient showing of financial hardship”²⁷ that is more than “[m]ere allegations or documentation of financial loss, standing alone. Rather, [the Commission may] grant a waiver only when the impact of the regulatory fee will affect a regulatee’s ability to serve the public. It [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”²⁸ Relevant financial documents include the licensee’s balance sheet and profit and loss statement (audited, if available); a cash flow projection for the next twelve months (with an explanation of how calculated); a list of the licensee’s officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information.²⁹

Futhermore, we explained that Licensee did not accurately summarize the standard from *1994 Report and Order* and *1994 MO&O*.³⁰ Moreover, Licensee failed to provide the required financial documentation and show it lacked sufficient funds to pay the regulatory fee *and* to maintain service to the public. Finally, Licensee failed to establish for the petition to defer payment and for the *Waiver Request* both *good cause* and that the *public interest is served* in deferring payment and in granting the waiver. Simply, Licensee failed to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs. Hence, we denied both *Requests*.³¹

granted in part, 10 FCC Rcd 12759 (1995) (*1994 Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁵ Mar. 2, 2016, *Dismissal and Denial*, pp. 3, 6; *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²⁶ Mar. 2, 2016, *Dismissal and Denial*, pp. 3-4, 6; *Northeast Cellular*, 897 F.2d at 1166; *1994 Report and Order*, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) (“Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee’s ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

²⁷ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Mar. 2, 2016, *Dismissal and Denial*, p. 6; *Waiver Request* at 1.

³¹ Mar. 2, 2016, *Dismissal and Denial*, p. 7; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003).

On March 31, 2016, Licensee submitted a *Petition for Reconsideration*³² of the Managing Director's *Mar. 2, 2016, Dismissal and Denial*. Licensee asserted, (a) the *Letter Request* sought "a deferment of the regulatory fees," (b) the *Waiver Request* was a "separate submission seeking a waiver," (c) "[b]oth submission were addressed identically and tendered to the Secretary's Office" and "the Commission was obviously aware of them," (d) "the financial documentation ... is more than sufficient to demonstrate [Licensee's] inability to pay the regulatory fees ... each of these documents demonstrates a loss ... there are obviously insufficient funds to pay the regulatory fees ... it is clearly in the public interest to grant the requests." Because Licensee did not pay the debts, on May 29, 2016, we transferred the delinquent debts to Treasury.

Thereafter, on June 17, 2016, Licensee submitted the *Stay* asserting in relevant part, "a stay is not necessary. ... The [*Letter Request*] is tantamount to a request for a stay. Thus ... a stay request is not necessary. However, [Licensee] ... requests a stay of the March 2, 2016 letter ruling ... because [Licensee] meets the necessary criteria for a grant of a stay: (1) [Licensee] is likely to prevail on the merits; (2) it will suffer irreparable harm absent a stay; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would favor a grant of the stay."³³ Licensee asserts that its financial documentation "demonstrates [Licensee's] inability to pay the regulatory fees ... payment of the regulatory fees would cause [Licensee] irreparable financial harm ... grant of the stay would not harm any party; and finally, grant of the stay would be in the public interest since it would advance the constraints of the [1994 Report and Order] Regulatory Fee Order."³⁴

Standards

Reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.³⁵ A petition that simply repeats arguments previously considered and rejected will be denied.³⁶ Indeed, a petition for reconsideration is not to be used for the mere re-argument of points previously advanced and rejected.³⁷

An action on delegated authority is effective on the date of issuance,³⁸ and a petition for reconsideration does not stop the Commission from continuing to enforce its rules or, in the situation where petitions to defer payment and to waive a regulatory fee have been denied and

³² Front Range Sports Network, LLC, KJAC (FM), Facility ID No. 38345, KJAC-FM1, Facility ID No. 160514, *Petition for Reconsideration* (Mar. 31, 2016) (*Petition for Reconsideration*).

³³ *Stay* at 2.

³⁴ *Id.* at 2-3.

³⁵ See 47 C.F.R. § 1.106; *WWIZ, Inc., Memorandum Opinion and Order*, 37 F.C.C. 685, 686 (1964), *aff'd sub nom., Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); National Association of Broadcasters, *Memorandum Opinion and Order*, 18 FCC Rcd 24414, 24415 (2003).

³⁶ *Infinity Broadcasting Operations, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 4216 (2004).

³⁷ Dennis P. Corbett, Esq., *Letter*, 29 FCC Rcd 2093, 2094 (MB, 2014).

³⁸ 47 C.F.R. § 1.102(b)(1) ("Non-hearing ... actions taken pursuant to delegated authority shall, unless otherwise ordered by the designated authority, be effective upon release of the document containing the full text of such action ... or in the event such a document is not released, upon release of a public notice announcing the action in question.").

immediate payment has been demanded, to collect the amount due, and if payment is not made, to transfer the delinquent debt to the U.S. Treasury.³⁹

Before Licensee can obtain a stay, it must show that: (1) it will likely prevail on the merits; (2) it will suffer irreparable harm unless a stay is granted; (3) other interested parties will not be harmed if a stay is granted; and (4) a stay will serve the public interest. *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). Licensee has a burden of demonstrating either a combination of probable success and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in his favor.⁴⁰

Licensees are expected to know the Commission's rules and procedures⁴¹ for paying the annual regulatory fees, filing timely and complete petitions to defer payment and to request a waiver, and that separate pleadings are required for separate actions.⁴² Licensees are expected to know the consequences of failing to comply with the rules.

In establishing the regulatory fee program mandated by Congress,⁴³ the Commission set out the relevant schedules of the annual fees and established procedures for, among other matters, payment, waivers, reductions, and deferral, refunds, error claims, and penalties.⁴⁴

The Commission's rules at 47 C.F.R. §§ 0.401, 1.7, 1.44, and 1.1166 establish the proper locations and procedures for filing waiver requests and petitioning for deferral and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* upon receipt at the location designated by the Commission.⁴⁵ Under section 1.1166 of the

³⁹ 47 U.S.C. § 405(a) ("No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission."); 47 C.F.R. §§ 1.102(b)(2) ("If a petition for reconsideration of a non-hearing action is filed, the designated authority may in its discretion stay the effect of its action pending disposition of the petition for reconsideration.") and 1.1167(b) ("The filing of a petition for reconsideration ... of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. ... Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.); Applications of East River Electric Power Cooperative, *Memorandum Opinion and Order*, 18 FCC Rcd 15977, 15982, ¶ 13 (2003) ("The existence of a pending Petition for Reconsideration or Application for Review does not prevent the Commission from continuing to apply its rules ...").

⁴⁰ See *Charlie's Girls, Inc. v. Revlon, Inc.*, 483 F.2d 953, 954 (2d Cir. 1973) (*per curiam*); *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953).

⁴¹ 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc.*, *Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

⁴² 47 C.F.R. § 1.44(c) & (d) ("Requests requiring action by any person or persons pursuant to delegated authority shall not be combined in a pleading with requests for action by any other person or persons acting pursuant to delegated authority. Pleadings which combine requests in a manner prohibited by paragraph (a), (b), or (c) of this section may be returned without consideration to the person who filed the pleading.").

⁴³ See 47 C.F.R. § 1.1151.

⁴⁴ See 47 C.F.R. Part 1, Subpart G.

⁴⁵ 47 C.F.R. §§ 0.401 ("The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations ... will be returned to the applicant without processing."); 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their

Commission's rules, a petition to waive a regulatory fee "must be accompanied by the required fee and FCC Form."⁴⁶ If the applicant includes the fee, the request must be submitted to the Commission's lockbox bank.⁴⁷ Waiver requests that do not include the required fees or form will be dismissed unless accompanied by a separate petition to defer payment due to financial hardship, supported by documentation of the financial hardship.⁴⁸ "If no fee payment is submitted, the request should be filed with the Commission's Secretary."⁴⁹ Filing is accomplished by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

The Commission recognizes that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of *good cause*⁵⁰ and a finding that the *public interest will be served thereby*.⁵¹ As is set forth in 47 C.F.R. § 1.1166,⁵² the applicant has the burden of demonstrating relief is warranted,⁵³ *i.e.*, that special circumstances warrant a deviation from the general rule to collect the regulatory fee, and that the deviation will serve the public interest.⁵⁴

An applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.⁵⁵ A "sufficient showing of

receipt at the location designated by the Commission."); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

⁴⁶ 47 C.F.R. § 1.1166(c).

⁴⁷ 47 C.F.R. § 1.1166(a)(1).

⁴⁸ 47 C.F.R. § 1.1166(b); *Assessment and Collection of Regulatory Fees For Fiscal Year 2011, Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.").

⁴⁹ 47 C.F.R. § 1.1166(a)(2).

⁵⁰ 47 C.F.R. § 1.3.

⁵¹ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *See also* *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁵² 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission.").

⁵³ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

⁵⁴ *Northeast Cellular*, 897 F.2d at 1166.

⁵⁵ 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; *Phoenix Broadcasting, Inc. Stations KSWD and KPFB Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to

financial hardship”⁵⁶ is more than “[m]ere allegations or documentation of financial loss, standing alone. Rather, [the Commission may] grant a waiver only when the impact of the regulatory fee will affect a regulatee’s ability to serve the public. It [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”⁵⁷ The relevant financial documents include the licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of the licensee’s officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁵⁸

Discussion

As we discuss below, we deny Licensee’s belated request for a *Stay* of the Managing Director’s *Mar. 2, 2016 Dismissal and Denial* that demanded payment of the delinquent regulatory fees for stations KJAC-FM, and KJAC-FM1. As is set out earlier in the *Background* section, first, we dismissed both the *Letter Request* and *Waiver Request* because Licensee addressed both documents directly to the Office of the Managing Director at Room 1-A625, instead of the Office of the Secretary. Second, we dismissed Licensee’s *Letter Request* because that submission was not a separate petition to defer payment and it did not include supporting documentation.⁵⁹ Third, we dismissed both the *Letter Request* and *Waiver Request* because Licensee failed to establish both good cause and that the public interest is served. Alternatively, we denied both the *Letter Request* and the *Waiver Request* because Licensee failed to (1) show *good cause*⁶⁰ and that the *public interest will be served thereby*,⁶¹ (2) “fully document its

pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

⁵⁶ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ 47 C.F.R. §§ 1.44(c) & (d) (“(c) Requests requiring action by any person or persons pursuant to delegated authority shall not be combined in a pleading with requests for action by any other person or persons acting pursuant to delegated authority. (d) Pleadings which combine requests in a manner prohibited by paragraph (a), (b), or (c) of this section may be returned without consideration to the person who filed the pleading.”); 1.1166(a) (“Requests for waivers ... or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission.”); 1.1166(c) (“Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”).

⁶⁰ 47 C.F.R. § 1.3.

⁶¹ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 (“The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.”). *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995) (*1994 Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public,"⁶² and (3) to demonstrate that special circumstances warrant a deviation from the general rule to collect the regulatory fee, and that the deviation will serve the public interest.⁶³

Unless we grant a stay⁶⁴ in response to a timely separate pleading,⁶⁵ the dispositive dismissals and denials, and the resulting consequences of debt delinquency, demand for immediate payment, and red light status, were effective March 2, 2016. Licensee did not submit its *Stay* until June 17, 2016, well after we transferred to Treasury Licensee's delinquent debts. Belatedly, Licensee asserts broadly, and without reference to any authority overriding the relevant statute and Commission's rules,⁶⁶ that "a stay is not necessary." According to Licensee, the *Letter Request*, which has been dismissed and denied "is tantamount to a request for a stay. Thus ... a stay request is not necessary."⁶⁷ Licensee is mistaken, and its late submission of a *Stay* cannot alter the legal effect of the *Mar. 2, 2016, Dismissal and Denial*.

In determining whether to stay the effectiveness of the order, we use the four-factor test established in *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir.1958) (*Jobbers*), as modified in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.* 559 F.2d 841, 843 (D.C. Cir. 1977).⁶⁸ To prevail, Licensee must demonstrate (1) its appeal will likely succeed on the merits; (2) it will imminently suffer irreparable harm in the absence of a stay; (3) a stay will not cause harm to third parties; and (4) the public interest would be served (or would not be disserved by grant of a stay). As we discuss next, Licensee fails in these tasks.

Likely success on the merits.

According to Licensee, it is likely to prevail on the merits because "[a]ssociated with the September 24, 2015 Request for Waiver ... is documentation that demonstrates the inability of

⁶² *Id.*; Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

⁶³ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971); *Northeast Cellular*, 897 F.2d at 1166; 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFD Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities."); 47 C.F.R. § 1.1166.

⁶⁴ 47 U.S.C. § 405(a); 47 C.F.R. §§ 1.44(e) ("Any request to stay the effectiveness of any decision or order of the Commission shall be filed as a separate pleading. Any such request which is not filed as a separate pleading will not be considered by the Commission."); 1.102(b)(2), and 1.1167(b); Applications of East River Electric Power Cooperative, *Memorandum Opinion and Order*, 18 FCC Rcd 15977, 15982, ¶ 13 (2003).

⁶⁵ 47 C.F.R. § 1.44(e).

⁶⁶ *Stay* at 2.

⁶⁷ *Id.*

⁶⁸ Price Cap Regulation of Local Exchange Carriers, Rate-of-Return Sharing and Lower Formula Adjustment, *Order*, 10 FCC Rcd 11979, 11986-987 (1995).

[Licensee] to pay the regulatory fees.”⁶⁹ There are two problems with this approach. First, Licensee’s attempt to incorporate by reference matters raised in the *Letter Request*, the *Waiver Request*, and *Petition for Reconsideration*⁷⁰ is contrary to our rule at 47 C.F.R. § 1.44(e), which requires a “request to stay the effectiveness of any decision or order ... be filed as a separate pleading.” Second, Licensee fails to identify and establish the necessary elements of the substantive grounds for reconsideration and the theory that foretells success. In the *Mar. 2, 2016, Dismissal and Denial* and here, we furnished Licensee a comprehensive explanation of the standards and the reasons why we dismissed and denied the *Letter Request* and the *Waiver Request*. Even so, Licensee fails to illuminate even the existence of any necessary element for reconsideration, e.g., a material error, omission, or reason for reconsideration showing the dismissal and denial of both the *Letter Request* and the *Waiver Request* were contrary to the Commission’s rules at 47 C.F.R. §§ 0.401, 1.7, 1.44, or 1.1166. Simply, Licensee failed to present a substantial legal question. Instead, Licensee argues, from the *Waiver Request*, that the financial documents (a partnership tax return and a profit and loss statement) “demonstrates the inability of [Licensee] to pay the regulatory fees.”⁷¹ This mere assertion does not establish that Licensee will likely succeed on the merits. Undeniably, nothing in the *Stay* demonstrates that Licensee made a showing in both the *Letter Request* and the *Waiver Request* that Licensee lacks sufficient funds to pay the regulatory fee and to maintain service to the public,⁷² and that Licensee demonstrated for each *Request* good cause and the public interest is served.⁷³ Nothing in the *Stay* shows that Licensee will likely succeed on the merits.

Imminent irreparable harm.

Licensee makes the an unsupported assertion that “payment of the regulatory fees would cause it irreparable financial harms as demonstrated pursuant to the documents submitted as part of its waiver.”⁷⁴ Nothing in the *Stay* supports the assertion, and we disregard Licensee’s improper reference to matters not part of this pleading.⁷⁵ Accordingly, because it is not included in the *Stay*, we need not discuss in detail the shortcomings of the documentation that reports ordinary business loss on a partnership Federal Income Tax Form. That documentation, even if part of the *Stay* does not demonstrate the required element that the injury must be “both certain

⁶⁹ *Stay* at 2.

⁷⁰ Licensee cannot draw the content of its *Petition for Reconsideration* into this proceeding with an oblique reference to the pleading. See *Stay* at 1 (The *Mar. 2, 2016, Dismissal and Denial* “is the subject of a March 31, 2016 *Petition for Reconsideration* which is currently pending.”).

⁷¹ *Stay* at 2, compare with *Waiver Request* at 1 (“Attached is documentation demonstrating the inability of [Licensee] to pay the requisite regulatory fees.”).

⁷² FY 1994 MO&O.

⁷³ 47 C.F.R. § 1.1166.

⁷⁴ *Stay* at 3.

⁷⁵ See *Stay* at 1 and 2 referring to the documents attached to the *Waiver Request* and the *Petition for Reconsideration*. These documents are not a part of the *Stay* pleading; even so, we note the lack of merit in Licensee’s argument that the documents showing a business loss for tax purposes would prove its case. Licensee has a reported ordinary business income loss that is almost equal to non-expenditure deductions for “amortization expense” and “depreciation.” Additionally, Licensee deducted thousands of dollars for “gifts to sponsors,” “promotion materials,” “selling expenses,” and “meals and entertainment” on the tax form. Licensee has not shown how the public interest is served by waiving required annual regulatory fees to permit a regulatee to pay such discretionary charges. The public interest favors paying the annual regulatory fee. Indeed, if, as Licensee suggests, it is operating in the zone of insolvency, then under 31 U.S.C. § 3713, it is obliged to pay federal obligations first.

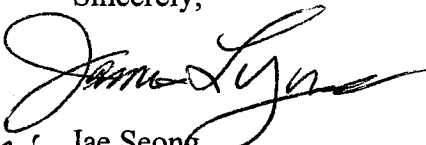
and great [and] it must be actual and not theoretical.”⁷⁶ Licensee must show that the existence of injury now or in the near future⁷⁷ directly from the action that the Licensee seeks to enjoin.⁷⁸ Licensee fails to provide any evidence to establish these elements. Moreover, Licensee’s assertion is one limited solely to “financial harm,” which is insufficient to establish imminent irreparable harm. As the court noted, “[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.”⁷⁹ Indeed, if Licensee succeeds in its petition for reconsideration and it receives a waiver, under 47 C.F.R. § 1.1160, it may request a refund of the fees paid. Thus, Licensee failed to show any irreparable harm to warrant a stay.

Third party harm and the public interest in granting the stay.

Licensee offers a one-sentence unsubstantiated assertion that “grant of the stay would not harm any party; and finally, grant of the stay would be in the public interest since it would advance the constraints of the Regulatory Fee Order, *supra*.”⁸⁰ Licensee’s brief conclusory assertion that is a restatement of two factors does not rise to the level of demonstrating Licensee met its burden. Licensee adds nothing to a restatement of the factors, and we will not speculate to fill in Licensee’s gaps. Our analysis of the first two elements disposes of the *Stay*, hence we need not discuss in detail the lack of merit in Licensee’s remaining two unsubstantiated claims.⁸¹

For the reasons stated, we deny Licensee’s *Stay*. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


For: Jae Seong
Acting Chief Financial Officer

⁷⁶ *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Jobbers*, 259 F.2d at 925.

⁸⁰ *Stay* at 3.

⁸¹ See *Washington Gas Co. v. FERC*, 758 F.2d at 674 (“analysis of the second factor disposes of these motions”); Price Cap Regulation of Local Exchange Carriers, Rate-of-Return Sharing And Lower Formula Adjustment, *Order*, 10 FCC Rcd 11979, 11986-987 (1995) (“We need not address petitioners’ arguments with respect to each of these factors, because they have clearly failed to demonstrate that they will suffer irreparable injury absent a stay ... and that a stay would serve the public interest.”).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 15 2017

OFFICE OF
MANAGING DIRECTOR

Anthony T. Lepore, Esq.
Radiotvlaw Associates, LLC
4101 Albemarle Street, NW, Suite 324
Washington, DC 20016-2151

Licensee/Applicant: Higher Calling
Communications, Inc.
Waiver Request: Refund Fiscal Year (FY) 2016
Regulatory Fee (Waiver Financial Hardship - Silent
Station)
Disposition: Denied (47 U.S.C. § 159; 47 C.F.R. §§
1.1160, 1.1166)
Station: KTUG (FM)
Fees: Fiscal Year (FY) 2016 Regulatory Fees
Date Request Filed: Sep. 27, 2016
Date Regulatory Fees Paid: Sep. 26, 2016
Fee Control No.: RROG 16-00016249

Dear Counsel:

This responds to Licensee's *Request*¹ for a refund of \$1,075.00, the amount it paid for the required Fiscal Year (FY) 2016 regulatory fees on the asserted ground that Licensee's station had been silent since March 16, 2016. As we discuss below, Licensee failed to establish that it should receive a refund on the ground that at the time the fee was due, the Commission would have waived payment of the fee because of financial hardship. Hence, we deny the *Request*.

Background

On September 27, 2016, Licensee submitted its *Request* for a refund of \$1,075.00 it paid for the FY 2016 annual regulatory fee. Licensee asserted its station, KTUG, was "silent since March 16, 2016 due to loss of transmitter site connectivity and other financial reasons," and that as of the date of the *Request*, the station "remains silent ... while attempting to raise capital to restore licensed operations either through an investor or outright sale of the facility."²

¹ Letter from Anthony T. Lepore, Esq., Radiotvlaw Associates, LLC, 4101 Albemarle T., NW, Suite 324, Washington, DC 20016-2151 to Marlene H. Dortch, Secretary, Federal Communications Commission, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St., S.W., Rm TW-B204, Washington, D.C. 20554 (Sep. 27, 2016)(*Request*).

² *Id.* at 1.

Continuing, Licensee asserted that it is “under financial hardship as a result of its total loss of revenues, and under ‘these circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.’”³

Licensee failed to provide any documentation showing its financial condition as of the due date for payment of the annual regulatory fee and the consequences from paying the fee. Moreover, Licensee did not provide copies of the applications filed to request silent status under a special temporary authority (STA) and an extension, and Licensee failed to update the *Request* when Licensee filed its notice of resumption of operations. Even so, the Commission’s records show that on March 17, 2016, Licensee filed its application to suspend operations⁴ because of “Staffing” with the following assertion of fact:

APPLICANT HAS BEEN AWAITING CONSUMMATION OF THE SALE OF THE SUBJECT FACILITY (SEE BALH-20150826AAN) WHICH HAS BEEN DELAYED WHILE ASSIGNEE RESOLVES LEASING ISSUES WITH THE BUREAU OF PARKS MANAGEMENT FOR BROADCAST AUXILIARY FACILITIES AND COMPLETES TECHNICAL MODIFICATIONS. PRINCIPALS OF APPLICANT WHO OPERATED THE STATION COULD NO LONGER REMAIN IN HUDSON WY TO OPERATE STATION BECAUSE OF NEW EMPLOYMENT COMMITMENTS. THUS THERE IS NO STAFFING TO OPERATE THE STATION AS LICENSED, NECESSITATING TAKING IT SILENT.

Media Bureau approved the request to permit “FM Radio Station KTUG to remain silent [based on Licensee’s] state[ment] that Station KTUG(FM) went silent on March 16, 2016, for staffing reasons.”⁵ Thereafter, on September 27, 2016 (the same day it submitted its *Request*), Licensee filed to extend the STA⁶ also because of “Staffing” with the following justification:

³ Request at 1-2, *citing* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12762, ¶ 11 (sic, should be ¶ 15) (1995).

⁴ Notification of Suspension of Operations/Request for Silent STA, FCC File No. BLSTA-20160317AAW (Mar. 17, 2016); *see* 47 C.F.R. §§ 73.1635, 73.1740.

⁵ Letter from Lisa Scanlan, Assistant Chief, Audio Division, Media Bureau, FCC, Washington, DC 20554 to Anthony T. Lepore, Esq., Radiotvlaw Associates, LLC, 4101 Albemarle St., NW, Ste 324, Washington, DC 20016-2151 (Apr. 7, 2016).

⁶ Request to Extend STA, FCC File No. BLESTA-20160927ACS (Sep. 27, 2016)

JUSTIFICATION FOR EXTENSION OF STA FOR SILENT AUTHORITY

SINCE THE FILING AND GRANT OF THE INITIAL SILENT STA, THE LICENSEE HAD THE PROPOSED TRANSACTION FOR SALE OF THE STATION (BALH-20150826AAN) TERMINATED BY PROPOSED ASSIGNEE DUE TO THE TECHNICAL HURDLES ASSOCIATED WITH DELIVERY OF BROADCAST SIGNAL FROM STUDIO TO TOWER SITE. LICENSEE HAS ENTERED INTO A NEW PURCHASE AGREEMENT WITH ANOTHER PARTY AND WILL BE FILING A FORM 314 ASSIGNMENT APPLICATION SHORTLY TO THAT PARTY. IN PREPARATION THEREOF, THE LICENSEE HAS COORDINATED THE FOLLOWING EVENTS IN THE PAST 60 DAYS ORDER TO FACILITATE PUTTING THE STATION BACK ON THE AIR:

1. A NEW STUDIO IS BEING CONSTRUCTED AT 325 W MAIN, STE D. RIVERTON, WY TO HOUSE THE KTUG FACILITIES;
2. PHONE/INTERNET SERVICE TO THE NEW STUDIO WAS ESTABLISHED MONDAY, 9/26.
- 3 RURAL INTERNET PROVIDER WIND RIVER INTERNET, RIVERTON, HAS BEEN RETAINED TO ESTABLISH POINT TO POINT WIRELESS LINK BETWEEN THE NEW STUDIO AND TRANSMITTER ATOP LIMESTONE MOUNTAIN, WITH WORK BEGINNING 9/22.
4. AUTOMATION COMPUTER HAS ARRIVED ON SITE AND IS BEING INSTALLED.

HIGHER CALLING COMMUNICATIONS IS TAKING ALL STEPS NECESSARY TO FACILITATE RESUMPTION OF OPERATIONS IN CONJUNCTION WITH THE EXECUTION OF AN APA TO SELL THE ASSETS OF THE STATION TO A THIRD PARTY AND A TBA AGREEMENT WITH THAT SAME PARTY TO OPERATE THE STATION (UPON RESUMPTION OF OPERATIONS) PRIOR TO GRANT AND CONSUMMATION OF THE 314 ASSIGNMENT APPLICATION TO BE FILED. FOR THE FOREGOING REASONS, LICENSEE REQUESTS EXTENSION OF THE EXISTING SILENT STA.

On October 26, 2016, Media Bureau granted Licensee's request for an "extension of its STA for continuing staffing reasons" until March 16, 2017.⁷ On November 1, 2016, Licensee a notice of Resumption of Operations certifying that it had "RESUMED OPERATIONS IN ACCORDANCE WITH LICENSED PARAMETERS ON OCTOBER 31, 2016."⁸

⁷ Letter from Lisa Scanlan, Assistant Chief, Audio Division, Media Bureau, FCC, Washington, DC 20554 to Anthony T. Lepore, Esq., Radiotvlaw Associates, LLC, 4101 Albemarle St., NW, Ste 324, Washington, DC 20016-2151 (Oct. 16, 2016).

⁸ FCC Form Resumption of Operations, Higher Calling Communications, Inc. (Nov. 1, 2016).

Standards

Licensees are expected to know the Commission's rules and procedures,⁹ including those for paying the annual regulatory fees and for filing a timely and complete request for a refund and a waiver.

For example, under 47 U.S.C. § 159 and the Commission's rules, we are required to "assess and collect regulatory fees"¹⁰ to recover the costs of the Commission's regulatory activities.¹¹ In establishing the regulatory fee program mandated by Congress,¹² the Commission set out the relevant schedules of the annual fees¹³ and established procedures for, among other matters, payment, waivers, reductions and deferral, refunds, error claims, and penalties.¹⁴

Specifically, under 47 C.F.R. §§ 1.1160(a) and 1.1166, a refund may be made only under specific circumstances, *e.g.*, "[w]hen no regulatory fee is required or an excessive fee has been paid" or "[w]hen a waiver is granted in accordance with § 1.1166."¹⁵ Under § 1.1166, fees may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.¹⁶

As to a waiver, the Commission recognizes that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause¹⁷ and a finding that the public interest will be served thereby.¹⁸ The applicant has the burden of demonstrating a waiver is warranted,¹⁹ *i.e.*, that special circumstances warrant a deviation from the general rule, here to collect the regulatory fee, and that the deviation will serve the public interest.²⁰

⁹ 47 C.F.R. § 0.406; *see* Life on the Way Communications, Inc., *Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

¹⁰ *FY 2012 Fee Order*; *see also e.g.*, Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812 (2011) (*2011 Regulatory Fee Order*).

¹¹ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

¹² *See* 47 C.F.R. § 1.1151.

¹³ *See e.g.*, 47 C.F.R. § 1.1154.

¹⁴ *See* 47 C.F.R. Part 1, Subpart G.

¹⁵ 47 C.F.R. § 1.1160(a)(1) & (3).

¹⁶ 47 C.F.R. § 1.1166 ("fees established by sections 1.1152 through 1.1156 may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."); *cf* 47 C.F.R. § 1.3.

¹⁷ 47 C.F.R. §§ 1.3, 1.1166.

¹⁸ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (*1994 Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²⁰ *Northeast Cellular*, 897 F.2d at 1166.

47 C.F.R. § 1.1166 provides the procedure for seeking relief from paying the annual regulatory fee, *i.e.*,

The fees established by sections 1.1152 through 1.1156 may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.

Specifically, an applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.²¹ The required "sufficient showing of financial hardship"²² is more that "[m]ere allegations or documentation of financial loss, standing alone. [I]t [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."²³ Thus, to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.²⁴

Discussion

The Commission has narrowly interpreted its authority to grant waivers and deferrals to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.²⁵ In that context, a "sufficient showing of financial hardship"²⁶ is more than "[m]ere allegations or documentation of financial loss, standing alone," rather "it [is] incumbent upon each regulatee to fully document its financial

²¹ 1994 Report and Order, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

²² FY 1994 MO&O, 10 FCC Rcd at 12761-62, ¶ 13.

²³ *Id.*

²⁴ *Id.* 1994 Report and Order, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

²⁵ Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, ¶¶ 70, 88 (1987); Accipiter Communications, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 18239, 18241, ¶ 8 (2001) (waiver predicated on financial need must show impact of regulatory fee will affect regulatee's ability to serve the public).

²⁶ FY 1994 MO&O, 10 FCC Rcd at 12761-62, ¶ 13.

position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."²⁷

Financial documentation to present a "financial hardship"²⁸ includes, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. Pertinent to stations that file a petition to go dark or to become silent, as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions "are generally based on financial hardship,"²⁹ and "[u]nder th[ose] circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship."³⁰ Licensee did not establish that these circumstances are present and applicable.

Moreover, a waiver of the Commission's rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.³¹ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.³²

Licensee did not carry its burden set forth at 47 C.F.R. § 1.1166 to demonstrate that on "a case-by-case" it has shown "good cause" and that the "waiver [of the required fee] would promote the public interest."³³ Instead, Licensee asserts only that its station was silent "due to loss of transmitter site connectivity and other financial reasons and [it] remains silent ... while attempting to raise capital to restore licensed operations either through an investor or outright sale of the facility." There are three problems with Licensee's approach.

First, Licensee's assertion in its *Request* that it sought silent status because of financial hardship is contradicted by Licensee's application for the STA and the extension. Licensee asserted in both applications that it had *staffing* problems, *i.e.*, "PRINCIPALS OF APPLICANT WHO OPERATED THE STATION COULD NO LONGER REMAIN ... TO OPERATE STATION BECAUSE OF NEW EMPLOYMENT COMMITMENTS. THUS THERE IS NO STAFFING TO OPERATE THE STATION AS LICENSED."³⁴

²⁷ *Id.*

²⁸ *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

²⁹ 10 FCC Rcd at 12762 ¶ 15.

³⁰ *Id.*

³¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

³² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

³³ 47 C.F.R. § 1.1166.

³⁴ Each application included Licensee's certification, "I hereby certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations." Furthermore, each application contained the following warning, "WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503)."

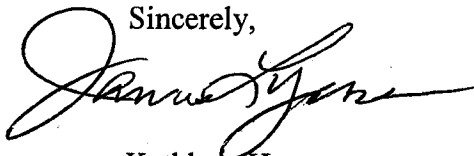
Second, Licensee failed to include with either the application to go silent or the *Request* any financial documentation showing it lacked funds sufficient to pay the FY 2016 regulatory fee and to maintain its service to the public.³⁵ It is not enough merely to assert silent status, especially because Licensee's request to be silent was for reasons unrelated to financial hardship.³⁶ Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"³⁷ is the understanding that the applicant's petition to go dark (silent) was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission's relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Here, Licensee's reason for going silent was because of a staffing problem, not financial hardship. In the light of the applications for STA and an extension, Licensee's *Request* is misleading.³⁸ Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³⁹

Third, on November 1, 2016, Licensee notified the Commission that it "resumed operations in accordance with licensed parameters on October 31, 2016,"⁴⁰ and thereby conclusively rebutted Licensee's unsupported assertion in its *Request* that "imposition of the regulatory fees could be an impediment to restoration of broadcast service."⁴¹

Licensee's unsupported assertions in the *Request* are soundly contradicted by its certifications in the applications for an STA and an extension, as well as the notice of resumed operations. Moreover, Licensee fails to establish good cause or demonstrate that the public interest is served by waiving the fee. We deny the *Request*.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



KOR: Kathleen Heuer
Chief Financial Officer

³⁵ 10 FCC Rcd at 12761-62 ¶ 13.

³⁶ The FCC Form to request silent status includes in the section, "Reason for going silent" five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. In this matter, Licensee selected "Staffing," and it did not state in the reason that it was experiencing financial hardship.

³⁷ 10 FCC Rcd at 12762 ¶ 15.

³⁸ 47 C.F.R. § 1.65 "Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application"

³⁹ 9 FCC Rcd at 5344 ¶ 29.

⁴⁰ Resumption of Operations (Nov. 1, 2016).

⁴¹ *Request* at 1-2.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 5 2017

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Post Office Box 250
Mount Vernon, WA 98273

Licensee/Applicant/Debtor: **J & J Broadcasting, Inc.**

Waiver or Reduction Request: **Financial Hardship**

Disposition: **Denied**

Stations: KAPS and KBRC

FRN: 0020597696

Fee(s): Fiscal Year (FY) 2016 Regulatory Fees

Fee Control No.: RROG-16-00016220

Date Filed: Sep. 19, 2016

Date Regulatory Fee Paid: Sep. 22, 2016

Dear Mr. Di Meo:

This responds to Licensee's *Request*¹ for a waiver or reduction of the required Fiscal Year (FY) 2016 regulatory fees it paid for call sign stations KAPS and KBRC on the grounds of financial hardship. As we discuss below, we deny the *Request* because Licensee does not show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public,² and as such, Licensee fails to demonstrate good cause and that the public interest is served in granting a waiver.

¹ Letter from John Di Meo, President, J & J Broadcasting, Inc., P.O. Box 250, Mount Vernon, WA 98273 to Marlene H. Dortch, Secretary, FCC, Attn: Office of Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St., SW, Room TW-B204, Washington, DC 20544 (Sep. 14, 2016) (*Request*) with Affidavit of John Di Meo (*Affidavit*), J & J Broadcasting Inc Balance Sheet (Aug. 31, 2016) (*Balance Sheet*), J & J Broadcasting Inc Profit & Loss (Sep. 2015 through Aug. 2016) (*P&L*), and J & J Broadcasting Inc 12 Mo Budget Oct 16 – Sep 17 (*Cash Flow*).

² Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995); Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. . . . [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

Background

On September 14, 2016, Licensee requested, in the alternative, a “[w]aiver or [r]eduction of [its] [r]egulatory [f]ees for 2017.”³ Licensee included an *Affidavit* and two copies each of its *Balance Sheet*, *P&L*, and *Cash Flow*.⁴ In its *Request*, Licensee asserts it “suffered from declining revenue this past year and it is proving increasingly difficult to maintain a positive cash flow.”⁵ Licensee adds it is “family owned”⁶ with “limited resources,” and that this is the “first and only time [Licensee] requested a waiver or reduction in fees.”⁷ Licensee paid the fees for both stations, but did not submit a request for refund under 47 C.F.R. § 1.1160.

Standards

The Commission recognizes that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause⁸ and a finding that the public interest will be served thereby.⁹ The applicant has the burden of demonstrating a waiver is warranted,¹⁰ *i.e.*, that special circumstances warrant a deviation from the general rule, here to collect the regulatory fee, and that the deviation will serve the public interest.¹¹

Specifically, an applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹² The required “sufficient showing of financial hardship”¹³ is more than “[m]ere allegations or documentation of financial loss, standing alone,” and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”¹⁴ Thus, to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee’s balance sheet and profit

³ Request.

⁴ *Id.* at 1.

⁵ *Id.*

⁶ Indeed, John R. Di Meo and Julia Di Meo, husband and wife, are the only shareholders. See FCC 323, Ownership Report for Commercial Broadcast Stations, File No. BOA 20151027AFH (Oct. 21, 2015).

⁷ *Id.*

⁸ 47 C.F.R. § 1.3.

⁹ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁰ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹¹ *Northeast Cellular*, 897 F.2d at 1166.

¹² 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) (“Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee’s ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

¹³ *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

¹⁴ *Id.*

and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁵

Discussion

Licensee did not meet its burden of demonstrating compelling and extraordinary circumstances that a waiver would override the public interest that the government should be reimbursed for the Commission's regulatory action.¹⁶ Licensee asks for a waiver or reduction of the regulatory fees for two stations it paid on September 22, 2016; however, Licensee does not ask for a refund, which is necessary under 47 C.F.R. § 1.1160.¹⁷ Although that is a relevant defect in Licensee's submission, our disposition makes it unnecessary to discuss that oversight.

Licensee provided a *Balance Sheet*, *P&L*, and *Cash Flow*, which is much of the financial documentation necessary to review and decide a request to waive or reduce the regulatory fees for one or both stations; however, Licensee did not explain the impact of the fee on each station.¹⁸ Moreover, Licensee failed to explain how the *Cash Flow* was calculated or to provide a list of its officers and their individual compensation.¹⁹ Salary and compensation information is always relevant to our determination, and here especially because the total salary expenditures is about 60% of income. We expect Licensee to explain whether it paid its officers, and if so, how much. In addition, Licensee should have explained in detail several other entries. For example, the *Balance Sheet* reports retained earnings,²⁰ the amount of which is available to pay liabilities, shareholders, capital improvements, or annual regulatory fees. Also, Licensee reports on the *P&L* and *Cash Flow* interest only payments towards a loan, but Licensee does not show any payment toward the principal amount. Further, Licensee fails to include information relating the described business loan liability with the corporate assets. Moreover, on the *P&L* and *Cash Flow*, Licensee reported expense payments for management overrides. Licensee does not explain or define the term, management override, so we will apply the common definition that a management override is an action by management to overrule normally accepted accounting policies or procedures for an illegitimate purpose or with the intent of personal gain.²¹ The term commonly refers to fraudulent actions, and without any explanation as to what policies or procedures were (and will be based on the projected payments on the *Cash Flow*) overridden or the purpose for projecting that expenditure into the following year Licensee fails to persuade us that the expense is necessary or even appropriate. Furthermore, Licensee should have furnished a detailed explanation of the expenditure because Licensee's *Cash Flow* projects an increase in

¹⁵ *Id.*

¹⁶ *Id.*, 1994 Report and Order, 9 FCC Rcd at 5344.

¹⁷ 47 C.F.R. § 1.1160 “((a) Regulatory fees will be refunded, upon request, only in the following instances: * * * (3) When a waiver is granted in accordance with §1.1166.”)

¹⁸ FY 1994 MO&O, 10 FCC Rcd at 12761-62, ¶ 13.

¹⁹ *Id.*

²⁰ *Balance Sheet*.

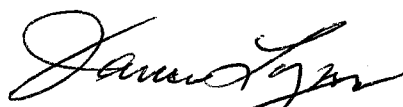
²¹ See e.g.,

http://www.aicpa.org/ForThePublic/AuditCommitteeEffectiveness/DownloadableDocuments/achilles_heel.pdf.

management overrides even as Licensee expects reductions in most expenses and an increase in income. Furthermore, Licensee did not explain the significant expense under the ambiguous label, "agy commission." We also note that Licensee claimed as expenses depreciation and amortization, which routinely, do not involve payment of money from income received. Finally, the financial documentation does not show that Licensee's payment of the regulatory fees has altered service to the public on either or both stations. We are left to speculate the extent to which the claimed corporate losses on the consolidated financial documentation apply to the two stations and the impact on each station's operations. Overall, Licensee has questionable or unexplained expenditures for depreciation, amortization, "agy commission," and "management override," and significant retained earnings. As such, Licensee failed to establish a case of financial hardship for both stations and show²² compelling and extraordinary circumstances outweigh the public interest in recouping the Commission's regulatory costs.²³ Licensee having failed to establish "good cause" and that the action would "promote the public interest," we deny the *Request*.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



KER: Kathleen Heuer
Chief Financial Officer

²² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²³ See *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). See also 47 C.F.R. § 1.65 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 24 2017

OFFICE OF
MANAGING DIRECTOR

John C. Trent, Esquire
Putbrese Hunsaker & Trent, P.C.
200 South Church Street
Woodstock, Virginia 22664

Licensee/Applicant/Petitioner: **John C. Trent, Acting Receiver**
Request: **Petition for Reconsideration**
Station: WDEK (AM)
Disposition: **Dismissed and Denied** ((47 U.S.C. §§ 159, 405; 47 C.F.R. §§ 0.401, 1.3, 1.7, 1.65, 1.106, 1.1157(c)(1), 1.1160, 1.1161, 1.1164, 1.1166, 1.1910)
Request for Exemption from Fiscal Year (FY) 2011 Regulatory Fee
Date of payment: Delinquent
Fee Control No.: RROG 11-00014052

Dear Counsel:

This responds to a Petition for Reconsideration (Petition)¹ from John C. Trent, Acting Receiver of Radio Station WDEK (AM) (Petitioner), seeking reversal of the Chief Financial Officer (CFO's) October 21, 2011 letter (Dismissal²) dismissing Petitioner's August 19, 2011, request for an exemption of the Fiscal Year (FY) 2011 regulatory fee owed for radio station WDEK (AM) (Request³). The Petition, not filed in accordance with the Commission's rules,⁴ asserts the "decision to deny the waiver ... is totally inconsistent with past precedent" and that that an "error occurred in the evaluation of the requisite waiver ... that ... must be reversed, based upon *Melody Music[, Inc. v. FCC]*, 345 F.2d 730 (D.C. Cir. 1965)]."⁵ As we discuss below,

¹ John C. Trent, Acting Receiver WDEK (AM), Lexington, SC, Request for Exemption of 2011 Regulatory Fee, Fee No.: RROG 11-00013754, Facility ID No. 72055, TO: Chief Financial Officer, Office of Managing Director, Petition for Reconsideration (Nov. 21, 2011) (Petition) with Exhibit 1, Branch Banking and Trust Company v. Peregon Communications, Inc., et al, (S.C., Cty of Lexington C/A No. 2007-CP-32-2758), Supplemental Order, Deficiency Requested (Jun. 17, 2010), Exhibit 2, Letter from Mark Stephens, Chief Financial Officer, FCC, Washington, DC to John C. Trent, Esq., Putbrese Hunsaker & Trent, P.C., 200 South Church St., Woodstock, VA 22664 (Mar. 18, 2011).

² Letter from Mark Stephens, Chief Financial Officer, FCC, Washington, DC 20554 to John C. Trent, Esquire, Putbrese Hunsaker & Trent, P.C., 200 South Church St., Woodstock, VA 22664 (Oct. 21, 2011) (Dismissal Letter).

³ Letter from John C. Trent, Law Offices of Putbrese Hunsaker & Trent, P.C., 200 South Church St., Woodstock, VA 22664 to FCC, Office of the Managing Director, 445 12th St., S.W., Room 1-A625, Washington DC 20554, Facsimile No. (202 418-7869 (Aug. 19, 2011)(Request).

⁴ 47 C.F.R. §§ 0.401, 1.7, 1.44, 1.106(i), and 1.1166.

⁵ Petition at 2.

we dismiss and deny the Petition because it was not filed with the Commission,⁶ the Petitioner is delinquent in paying fees owed to the Commission,⁷ and the Petitioner has not established grounds for reconsideration.⁸

Background

On August 19, 2011, Petitioner sent the Request by facsimile and email a letter to the Office of the Managing Director seeking “a waiver of the annual FY 2011 regulatory fee ... for the Station [WDEK (AM)]” on the assertion that “[u]nder ... Section 1.1162(b) [of Title 47, Code of Federal Regulations], duly appointed public officials are fee exempt [and i]n addition to being a duly appointed South Carolina State Officer of the Courts, the Station, being in the nature of a Receivership, is in financial hardship.”⁹ Petitioner added, the Commission “has granted waivers of the fees due to financial hardships on numerous occasions.”¹⁰ Petitioner, however, did not either pay the fee or file a separate petition to defer payment due to financial hardship, supported by documentation of the financial hardship. Finally, Petitioner asked “that any late penalty be waived and ... that the Commission does not associate a ‘red-light’ designation with the Station.”¹¹

On October 21, 2011, the CFO, acting on delegated authority, dismissed the Request because Petitioner failed to (a) include documentation to support the request that Petitioner “qualif[ies] as a government entity [under 47 C.F.R. § 1.1162(b)]” and (b) pay the fee or file a petition to defer payment due to financial hardship, supported by documentation of the financial hardship as is required by 47 C.F.R. § 1.1166(c). The Dismissal notified Petitioner the FY 2011 regulatory fee plus the 25 percent penalty was due within 30 days from the date of the letter. The Dismissal warned:

If you fail to pay the full amount due by that date, interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter, and under the law,¹² the Commission will initiate collection proceedings.

Because you are delinquent in paying the FY 2011 regulatory fee, a debt owed the United States, under 47 C.F.R. § 1.1910, the Commission will withhold action on any application filed or pending, and if the debt plus the accrued penalty is not paid, or other satisfactory arrangements are not made, any application filed or

⁶ 47 C.F.R. §§ 0.401. (“The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations set forth below will be returned to the applicant without processing. When an application or other filing does not involve the payment of a fee, the appropriate filing address or location is established elsewhere in the rules for the various types of submissions made to the Commission.”), 1.7 (“Unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or of the Commission’s staff acting on delegated authority, pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.”).

⁷ 47 U.S.C. §§ 159(c)(2), 405(a); 47 C.F.R. §§ 1.1164(e), 1.1167(b), 1.1910.

⁸ 47 C.F.R. §§ 0.445(e), 1.106.

⁹ Request.

¹⁰ *Id.*

¹¹ *Id.*

¹² See 47 C.F.R. § 1.1901, *et seq.*

pending may be dismissed. Moreover, the Commission may collect amounts due by administrative offset.¹³

(Footnotes in original.)

On November 21, 2011, Petitioner submitted to the CFO this Petition asserting (a) Petitioner is “a duly appointed agent of the Courts of the State of South Carolina,” (b) the Dismissal “is totally inconsistent with past precedent in matters pertaining to licensees who are bankrupt and or are in receivership,” and (c) “[t]here is absolutely no difference between the Hagan situation [March 18, 2011, letter granting a waiver request] and in this ... matter.”¹⁴

Standards

Under 47 C.F.R. § 1.106(i), “Petitions for reconsideration ... shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission’s Electronic Comment Filing System or other electronic filing system (such as ULS). Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed.”¹⁵ The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that they file their documents at the correct location specified in the Commission’s Rules.¹⁶ A document is *filed* with the Commission upon its receipt at the location designated by the Commission,¹⁷ and applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.¹⁸

Under 47 C.F.R. § 1.106(d), a petition for reconsideration must “state with particularity the respects in which petitioner believes the action taken by ... the designated authority should be changed,”¹⁹ and the petition must identify a material error, omission or reason warranting reconsideration.²⁰ Furthermore, under subsection 1.106(p), the Commission may dismiss or deny a “Petition[] for reconsideration of a Commission action that plainly do[es] not warrant consideration by the Commission” on one or more of the non-exclusive listing of examples.

The filing of a petition for reconsideration does not “excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without special order of the Commission”²¹ and it “will not relieve licensees from the requirement that full and proper payment of the

¹³ 47 C.F.R. § 1.1912.

¹⁴ Petition at 1-2.

¹⁵ 47 C.F.R. § 1.106(i). *See also* 47 C.F.R. § 1.1159(b) (“Petitions for reconsideration ... submitted with no accompanying payment should be filed with the Secretary”).

¹⁶ 47 C.F.R. § 0.401.

¹⁷ 47 C.F.R. § 1.7

¹⁸ 47 C.F.R. § 0.401.

¹⁹ 47 C.F.R. § 1.106(d)(1).

²⁰ 47 C.F.R. § 1.106(d)(2).

²¹ 47 U.S.C. § 405(a).

underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment."²²

In establishing the regulatory fee program mandated by Congress,²³ the Commission set out the relevant schedules of the annual fees and the established procedures for, among other matters, payment, waivers, reductions, and deferral, payment, refunds, error claims, and, penalties.²⁴

Pertinent to the waiver provision at 47 U.S.C. § 159(d), the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.²⁵ An applicant must show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.²⁶ In an appropriate situation, fee relief may be based on a "sufficient showing of financial hardship;"²⁷ however, "[m]ere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."²⁸ Thus, to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, e.g., a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.²⁹

²² 47 C.F.R. § 1.1167(b)(2) ("The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. ... If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed."); see Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5346, ¶ 35 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995) (FY 1994 R&O) ("The filing of a petition for reconsideration will not toll th[e] 30-day period."). See 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.").

²³ See 47 C.F.R. § 1.1151.

²⁴ See 47 C.F.R. Part 1, Subpart G.

²⁵ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). FY 1994 R&O, 9 FCC Rcd at 5344 ¶ 29.

²⁶ *Id.*

²⁷ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (FY 1994 MO&O).

²⁸ *Id.*

²⁹ *Id.*

As set forth in 47 C.F.R. § 1.65, “[e]ach applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall promptly as possible and in any event within 30 days ... amend the application ... so as to furnish such additional or corrected information”

Concerning payment, Congress mandated certain sanctions to promote timely and complete payment. Enforcement sanctions at 47 U.S.C. § 159(c) provide for the automatic assessment of a 25 percent penalty, a mandate that the Commission “may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section,” and direction that “[i]n addition to or in lieu of the penalties and dismissals ... the Commission may revoke any instrument of authorization held by an entity that has failed to make payment of a regulatory fee”³⁰ Corresponding Commission rules are set out at 47 C.F.R. §§ 1.1157 and 1.1164, *i.e.*, “[a]ny late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164,”³¹ which includes “a 25 percent penalty of the amount of the fee ... not paid in a timely manner,”³² dismissal of “the delinquent payor’s pending applications,”³³ and dismissal of “[a]ny pending or subsequently filed application.”³⁴

An application, “includes in addition to petitions and applications elsewhere defined in the Commission’s rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.”³⁵ Under the Commission’s procedures, “[a]n application (including a petition for reconsideration or any application for review of a fee determination) ... will be examined to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits (*see, e.g.*, 31 CFR 285.13; 47 CFR part 1, subpart P).”³⁶ Furthermore, “[a]pplications by any entity found not to have paid the proper application or regulatory fee will be handled pursuant to the rules set forth in 47 CFR part 1, subpart G.”³⁷ Additionally, “[a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (*see* §1.1901(i))”³⁸ ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.”³⁹ Hence, consistent with 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910, when an applicant for relief is delinquent

³⁰ 47 U.S.C. § 159(c).

³¹ 47 C.F.R. § 1.1157(c)(1).

³² 47 C.F.R. § 1.1164.

³³ 47 C.F.R. § 1.1164(c).

³⁴ 47 C.F.R. § 1.1164(e) *accord* 47 C.F.R. § 1.1167(b)(2).

³⁵ 47 C.F.R. § 1.1901(d).

³⁶ 47 C.F.R. § 1.1910(a)(1).

³⁷ 47 C.F.R. § 1.1910(b)(1).

³⁸ 47 C.F.R. § 1.1910(b)(2).

³⁹ 47 C.F.R. § 1.1910(b)(3).

in paying the regulatory fee, the Commission will dismiss⁴⁰ the request for relief and impose the statutory penalty.⁴¹

Discussion

The Commission's orders and rules include well-established procedures for filing applications at the Commission including, for example, submitting a petition for reconsideration and the consequences when a licensee fails to comply.⁴²

Pertinent to the matter before us, section 1.106(i) of Title 47, Code of Federal Regulations, specifies that a petition for reconsideration must be filed with the Secretary, and section 1.106(d)(1) specifies that the petitioner must show either a material error in the Commission's original order or raise changed circumstances or unknown additional facts not known or existing at the time of petitioner's last opportunity to present such matters.⁴³ Also, a petition for reconsideration does not excuse the petitioner from complying with the order or requirement of the Commission on delegated authority.⁴⁴ Our rule provides, petitions for reconsideration that "plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s)."⁴⁵

Here, Petitioner made two procedural missteps and thereby broached fatal impediments that result in our dismissal of the Petition without having to consider its substance. First, Petitioner sent the Petition to the CFO rather than complying with 47 C.F.R. §§ 1.106(i) and 1.1159(b) that require submission to the Secretary. Section 1.106(i), states, "petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed."⁴⁶ The Petition was not filed, so on that ground, we dismiss.⁴⁷

⁴⁰ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.").

⁴¹ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferments of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. * * * The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.").

⁴² See e.g., 47 C.F.R. §§ 1.44, 1.80, and 1.106.

⁴³ *WWIZ, Inc., Memorandum Opinion and Order*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); National Association of Broadcasters, *Memorandum Opinion and Order*, 18 FCC Rcd 24414 ¶ 4 (2003). See 47 C.F.R. § 1.106(d)(1) (petitions for reconsideration must "state with particularity the respects in which petitioner believes the action taken by the Commission ... should be changed") and 47 C.F.R. § 1.106(d)(2) (requiring petitioner to cite, where appropriate, "the findings [of fact] and/or conclusions [of law] which petitioner believes to be erroneous, and shall state with particularity the respects in which [the petitioner] believes such findings and/or conclusions should be changed").

⁴⁴ 47 U.S.C. § 405(a); 47 C.F.R. §§ 1.102, 1.1164(e), 1.1167(b)(2), *FY 1994 R&O*, 9 FCC Rcd at 5346 ¶ 35.

⁴⁵ 47 C.F.R. § 1.106(p).

⁴⁶ 47 C.F.R. §§ 0.401, 1.106(i).

⁴⁷ 47 C.F.R. § 1.106(p)(7).

Next, we withheld action on the Petition when it was received, and now we dismiss because Petitioner is delinquent in paying a debt owed the Commission. Petitioner's submission of a petition for reconsideration does not stop the Commission from continuing to enforce its rules or to collect the amount due, and, as appropriate, to transfer the delinquent debt to the U.S. Treasury.⁴⁸ Petitioner failed to pay the FY 2011 regulatory fee plus the 25% statutory penalty within 30 days from October 21, 2011. Our Dismissal notified Petitioner that if he failed to pay the full amount by the due date, interest and applicable additional penalties required by 31 U.S.C. § 3717 would accrue from October 21, 2011, that the debt was delinquent, so debt collection proceedings will be initiated, and the Commission would withhold action on any application filed or pending and thereafter dismiss.⁴⁹ Where, as here, Petitioner is delinquent in paying an obligation to the Commission, the Commission will dismiss any subsequently filed petition for reconsideration.⁵⁰ Thus, on this second ground we dismiss the Petition to dispose of the matter. As a matter of administrative economy, however, we next explain alternative reasons for denying the *Petition*.

Reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁵¹ An applicant may not use a petition for reconsideration as a vehicle merely to reargue points previously advanced and rejected.⁵²

⁴⁸ 47 U.S.C. § 405(a) ("No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission."); 47 C.F.R. §§ 1.102(b)(2) ("If a petition for reconsideration of a non-hearing action is filed, the designated authority may in its discretion stay the effect of its action pending disposition of the petition for reconsideration.") and 1.1167(b) ("The filing of a petition for reconsideration ... of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. ... Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director ... (2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed."); Applications of East River Electric Power Cooperative, *Memorandum Opinion and Order*, 18 FCC Rcd 15977, 15982, ¶ 13 (2003) ("The existence of a pending Petition for Reconsideration or Application for Review does not prevent the Commission from continuing to apply its rules").

⁴⁹ Dismissal at 2.

⁵⁰ 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee"); 1.1167(b) ("The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. ... If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed."); 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, ... by any entity found to be delinquent in its debt to the Commission ... action will be withheld on the application until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and/or that the application may be dismissed.").

⁵¹ See 47 C.F.R. § 1.106; *WWIZ, Inc.*, 37 F.C.C. at 686; *NAB*, 18 FCC Rcd at 24415.

⁵² Application of Jefferson-Pilot Communications Co., *Memorandum Opinion and Order*, 10 FCC Rcd 12120 ¶ 4 (1995) ("Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters. ... reconsideration will not be granted for the purpose of debating matters on which we have already deliberated and spoken"); Dennis P. Corbett, Esq., *Letter*, 29 FCC Rcd 2093, 2094-95 (MB 2014).

Licensee has not identified a material error or omission that is contrary to the law and the Commission's established procedures.⁵³ We begin by reviewing Petitioner's Request, which also suffered from fatal procedural errors.

First, Petitioner "submitted [the Request] *via facsimile and email*" to the "Office of the Managing Director ... Room 1-A625," which is contrary to the Commission's procedural rule at 47 C.F.R. § 1.1166 that requires filing with the Secretary. As such, the Request was never filed and it was dismissible.⁵⁴ Nonetheless, at that time, as a matter of administrative economy, we looked to the substance of the Request and found it defective. Petitioner incorrectly sought an exemption from the fee under 47 C.F.R. § 1.1162(b),⁵⁵ which, as we explained in the Dismissal, refers to a government entity as the rule defines the term. To be clear, section 1.1162(b) provides:

For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

47 C.F.R. § 1.1166(b); 47 U.S.C. § 159(h); *see* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5339-40 ¶¶ 14-16 (1994). In contrast to the plain words in our rule, Petitioner offered only his unsupported assertion that a "State Court Appointed Receiver for the Station" is a "duly appointed public official," and "should therefore be exempt,"⁵⁶ and that his appointment as a "South Carolina State Officer of the Courts" gives him status contrary to the plain reading of the rule that provides an exemption for the government entity meeting the definition and exercising sovereign direction and control over a community or program. A state court appointed receiver or as Petitioner labeled, an "Officer of the Courts,"⁵⁷ is not a *government entity* as defined in our rule and Petitioner has not shown otherwise in the Request or Petition. We note, we need not discuss in detail Petitioner's misunderstanding that the term, "duly appointed public official," is not a defined "government entity," rather it refers to a

("Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters. ... It is settled Commission policy that petitions for reconsideration are not to be used for the mere re-argument of points previously advanced and rejected.").

⁵³ 47 C.F.R. § 1.106(p)(1).

⁵⁴ 47 C.F.R. 1.7, 0.401, 1.1159(c), 1.1166.

⁵⁵ Request.

⁵⁶ Request.

⁵⁷ Petition failed to establish that receivership is an appointment as an officer of the court, but even so, such a designation does not create a person in the form of a government entity, and Petitioner fails to prove otherwise. Despite Petitioner's emphasis on the phrase, "Virginia State Officer of the Courts," Petitioner did not offer an additional definition or any legal authority to treat the term, officer of the court, as having more importance than its common meaning as set forth in Black's Law Dictionary (10th ed. 2014), *i.e.*, "officer of the court ... Someone who is charged with upholding the law and administering the judicial system. Typically, *officer of the court* refers to a judge, clerk, bailiff, sheriff, or the like, but the term also applies to a lawyer, who is obliged to obey court rules and who owes a duty of candor to the court."

person controlling the “government entity” as that term is defined to be a “political organization or subpart thereof” and that “duly appointed public official” must be empowered to exercise “sovereign direction and control” over the community or program. Now, Petitioner fails to establish that the CFO erred in relying on the plain meaning of section 1.1162(b) and concluding that Petitioner “did not furnish evidence that [he] qualif[ies] as a government entity,” and “asserting that [he is] a court appointed receiver does not establish the existence of that exemption.”⁵⁸ Petitioner fails to establish a material error in this determination.⁵⁹

Next, Petitioner asserts the Dismissal is “totally inconsistent with past precedent in matters pertaining to licensees who are bankrupt and or are in receivership.”⁶⁰ Petitioner’s reference to an earlier dated letter from the CFO that granted relief to another applicant does not establish the existence of a material error in this decision. First, Petitioner has not established that the CFO erred in the Dismissal by determining the Petitioner failed to establish it was exempt under 47 C.F.R. § 1.1162(b) or that Petitioner failed to establish under 47 C.F.R. § 1.1166(c) a compelling case of financial hardship. Moreover, contrary to Petitioner’s summary assertion, the statute and Commission’s rules require the Commission to consider each request for a waiver of a regulatory fee individually. Plainly, 47 C.F.R. § 1.1166 provides that the Commission “may ... waive[]” payment of a fee “in specific instances, on a case-by-case basis, where good cause is shown and where waiver ... of the fee would promote the public interest.” *Accord* 47 U.S.C. § 159(d). Thus, the decision to waive is within the discretion of the Commission, the action is not mandatory, and the action is limited to specific instances on a case-by-case basis, *i.e.*, individualized. Moreover, the law requires the applicant to make a case by establishing both prongs of the standard at 47 U.S.C. § 159(d) and 47 C.F.R. § 1.1166, “for good case shown” and that the “action would promote the public interest.” An incomplete and unsupported request to the Commission to treat an applicant as fee exempt or in financial hardship does not meet the standard. Furthermore, Petitioner does not bolster its position by referring to another summary decision that is not precedent.⁶¹

Next, Petitioner’s mere assertion that he is a state-court appointed receiver does not establish financial hardship. Indeed, in this case, Petitioner failed to provide any evidence that the receivership appointment arose out of financial hardship experienced by the licensed station, and he failed to furnish any financial documentation supporting a claim that Petitioner lacks the funds to pay the fees. Instead, Petitioner offered in the Request and in his Petition, only a broad assertion that he is a state-court appointed receiver. That status without relevant evidence of the legal basis for appointment does not support a waiver. We note, state laws may differ, but a receiver may be appointed for many reasons not all of which are based on insolvency, and a receiver may be appointed merely to assume control of an asset for purposes of sale to satisfy a judgment due a third party. When the Commission referred to receivership proceedings,⁶² it was speaking of those in the federal courts and in the context of a bankruptcy liquidation case.⁶³ In

⁵⁸ Dismissal at 1.

⁵⁹ 47 C.F.R. § 1.106(p)(1).

⁶⁰ Petition at 1.

⁶¹ 47 C.F.R. § 0.445(e).

⁶² Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 14 (1995) (FY 1994 MO&O).

⁶³ *Matter of Phillips*, 966 F.2d 926, 930 (5th Cir. 1992), *rehearing denied* (1992):

2003, the Commission explained, an applicant must show that the proceeding represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions.⁶⁴ The applicant must show the appointment was because of financial hardship and pursuant to federal law.⁶⁵

Finally, Petitioner points to *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) to support the assertion that “broadcasters must be treated equally by the FCC.” Petitioner misunderstands the facts and holding in *Melody Music* and the standards applicable to a request for a waiver of a regulatory fee, which by its statutory standard mandates that each applicant is treated individually and each applicant for a waiver or deferral from payment must show both good cause and that the action would promote the public interest. Furthermore, the CFO explained in detail the reason for denying Petitioner’s Request, *i.e.*, Petitioner’s failure to provide “supporting documentation to establish a compelling case of financial hardship.”⁶⁶

Petitioner’s burden was to demonstrate in the Request special circumstances that warrant a deviation from the general rule to collect the regulatory fee, and that the deviation will serve the public interest.⁶⁷ We explained that Petitioner failed the

Congress consolidated federal bankruptcy law in the Bankruptcy Act of 1898. *See* Act of July 1, 1898, c. 541, 30 Stat. 544. At that time, bankruptcy law only facilitated liquidation. Not until 1933 did Congress amend the Bankruptcy Act to permit reorganization of certain entities. *See* Pub.L. No. 72-420, 47 Stat. 1474 (1933). In 1938, Congress amended the Bankruptcy Act with the precursor to Chapter 11 to facilitate general corporate reorganization. *See* Act of June 22, 1938, Pub.L. No. 74-575, 52 Stat. 840 (1938). Until Congress substantially revised the Bankruptcy Act with the Bankruptcy Reform Act of 1978, the Bankruptcy Act apparently referred to entities undergoing Chapter 7 liquidation as “bankrupts,” and those undergoing Chapter 11 reorganization as “debtors.” *See* S. REP. No. 989, 95th Cong., 2d Sess. 23 (1978), *reprinted in* Historical and Revision Notes following 11 U.S.C.A. § 101(12) at 36 (1979), *and reprinted in* 1978 U.S.C.C.A.N. 5787, 5809. But the Bankruptcy Reform Act of 1978 removed all references to “bankrupt” in federal bankruptcy law, created the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, and adopted “debtor” to refer to all who seek protection under the Code, whether they do so through liquidation under Chapter 7 or reorganization under Chapter 11. *See* 11 U.S.C. § 101 (12); *see generally* H.R. REP. No. 595, 95th Cong., 2d Sess. 3-5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 5965-66 (recounting Reform Act’s history and purpose).

⁶⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989 ¶ 11 (2003).

⁶⁵ Federal Rule of Civil Procedure 66. *See Netsphere, Inc. v. Baron*, 703 F.3d 296, 306 (5th Cir. 2012); Wright & Miller, 12 Fed Prac. & Proc. Civ. § 2983 (2d ed.).

⁶⁶ Dismissal at 2.

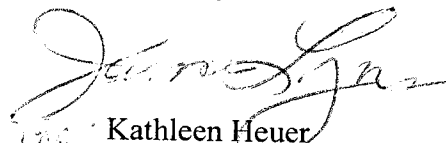
⁶⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir 1990) (“FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). However, as we instructed in *WAIT Radio*, those waivers must be founded upon an ‘appropriate general standard.’ We held that ‘sound administrative procedure contemplates waivers ... granted only pursuant to a relevant standard ... [which is] best expressed in a rule that obviates discriminatory approaches.’ 418 F.2d at 1159.”); 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; *Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) (“Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee’s ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

unambiguous standard set forth at 47 C.F.R. § 1.1166. Now, Petitioner first ignores our procedural rules to file the Petition and second fails to demonstrate a material error or omission in the CFO's decision. Petitioner's restated arguments that we previously considered and rejected do not establish grounds for reconsideration. As such, on the grounds discussed above, we deny the *Petition*.⁶⁸

Petitioner remains delinquent in paying the FY 2011 regulatory fee, the statutory 25% penalty,⁶⁹ and charges provided for under 31 U.S.C. § 3717, and he is red lighted.⁷⁰

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


Kathleen Heuer
Chief Financial Officer

⁶⁸ *WWIZ, Inc.*, 37 FCC at 686; *Infinity Broadcasting Operations, Inc.*, *Memorandum Opinion and Order*, 19 FCC Rcd 4216 (2004), *National Association of Broadcasters*, *Memorandum Opinion and Order*, 18 FCC Rcd 24414, 24415 ¶ 4 (Reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.).

⁶⁹ 47 U.S.C. § 159(c)(1).

⁷⁰ See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ..."); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").